

ORIGINAL NEW APPLICATION

BEFORE THE ARIZONA CORPORATION COM



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IN THE MATTER OF THE APPLICATION )  
OF XO COMMUNICATIONS SERVICES, ) DOCKET NO. T-04302A-14-0115  
LLC FOR RESCISSION OF BOND )  
REQUIREMENT CONTAINED IN )  
ARIZONA CORPORATION COMMISSION )  
DECISION NO. 70471. )  
)  
)  
)

**APPLICATION**

XO Communications Services, LLC ("XO" or "Applicant") requests rescission of the bond requirement included in Arizona Corporation Commission ("Commission") Decision No. 70471.

**BACKGROUND**

XO is a national provider of local, long distance and dedicated internet services to businesses, large enterprises and telecommunications carriers. XO was certified by the Commission to provide intrastate telecommunications services in Arizona on January 29, 1999. See, Decision No. 61373. XO serves business customers in the Phoenix metropolitan area. XO does not serve residential customers.

When XO was certified by the Commission in January 1999, no bond was required by the Commission. Over the next four years, XO operated with no bond and no significant consumer issues or inquiries by the Commission. In 2003, the Commission approved XO's request to reorganize its corporate structure and encumber assets. That order, ACC Decision 65520, required XO to obtain and submit to the Commission a \$235,000 performance bond to cover customer advances, deposits and prepayments. Over the next four years, XO's obligation to maintain a \$235,000 performance bond was reaffirmed by decisions 67006 (transfer of control of Allegiance Telecom, Inc.), 67460 (internal corporation reorganization), and 70471 (financing and asset encumbrance). XO has renewed and resubmitted to the Commission Business office the \$235,000 bond annually for the past ten years (2003-2014).

XO's compliance with Commission regulations and orders was never at issue, the bond in place was never invoked, and no customer complaint brought into question XO's conduct as a public service corporation. During this period, it was the general policy of the Commission to require a bond without a specific inquiry into the track record of the company. Because XO has a track record of good performance and the bond is not needed to ensure XO's compliance with Commission orders, XO respectfully asks that the Commission issue an order relieving XO of its bond obligation.

### **ANALYSIS**

"In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust." A.A.C. R14-2-1105(D). XO is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the

terms of its certification. ACC Decision No. 61373, p.4, para. 19(j) (1999). While the Commission may require a performance bond prior to certification, for the reasons set forth below continuing this requirement for XO, an established competitive telecommunications company, is unnecessary, costly.

### **1. Excellent Record of Compliance**

XO has been a certified carrier in Arizona since 1999. Through-out this period XO has complied with the requirements of its certification, including filing annual reports, paying annual assessments for funding the ACC and RUCO (A.R.S. §40-401; §40-401.01), funding Arizona universal service, and seeking approval of the Commission, when required, of certain transactions or financings. Any complaints against XO (or predecessor companies) have been resolved and closed with no formal litigation and without penalty to XO. XO has a substantial physical presence in the State, with installed network facilities, and is available to respond in a timely and responsive manner to any questions or concerns regarding customer service.

The bond that XO has had on file with the Commission for the last ten years has never been drawn upon or requested. Obtaining and maintaining this bond over the last ten plus years created a significant expense for XO and will continue to do so. Moreover, it diverts monies that XO could use to grow its network or improve its systems.

### **2. The Bond Is Not Necessary or Reasonable.**

The Commission “*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers.” A.A.C. R14-2-1105(D) (emphasis added). This rule was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and

few carriers had invested in equipment and facilities. The new competitive local exchange carriers ("CLECs") did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal obligations. Bonds were one way for the Commission to protect consumers from companies with little or no assets or few ties to Arizona.

Now, thirteen years later, the market is very different. Indeed, customer deposits and advances are no more at risk with an established, facilities-based CLEC like XO than they are with Qwest Corporation or Cox, which operate in competition with facilities-based CLECs but carry no performance bonds benefiting the Commission. XO has established through its investment in the state, and by its operating history, that customer deposits are not at risk. Therefore, a bond is not necessary or reasonable given XO's history.

### **3. The Commission is Moving Towards Bonds Only When Necessary**

Last month, the Commission approved the Broadvox-CLEC, LLC's application to be relieved of its bond requirement. The Commission concluded that it was in the public interest to approve the Broadvox application, and noted that the Commission has "recently been relieving telecommunications providers of the obligation of a bond requirement." *See* Decision No. 74410. Likewise, the Commission has recently approved a carrier certification request without requiring a bond of the applicant. *See* TNCI Operating Company, LLC T-20882A-13-0108. In recommending approval of the TNCI certification, Staff recommended no bond reflecting an appropriate reaction to changes in the competitive telecom market. Staff has recommended a "case by case" analysis for assessing the need for a bond. This makes sense. The Commission retains full authority to impose a bond if Staff is concerned about a company's managerial or technical ability to provide service in Arizona. Companies like XO, however, that have been

providing service for years, show no history of customer complaints or problems, and have demonstrated their technical and managerial expertise to provide service, should not be required to post or maintain a bond.

#### **4. Bond Documents**

If this application is approved, XO requests that the bond documents be returned to the following XO representative:

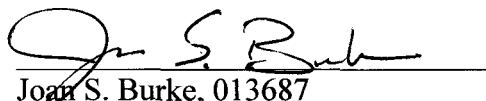
Mr. Nick Jukich  
Risk Management  
XO Communications  
13865 Sunrise Valley Drive, Suite 400  
Herndon, Virginia 20171-4661

#### **CONCLUSION**

For the foregoing reasons, XO respectfully requests an order cancelling the bond requirement in Decision No. 70471.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of April 2014.

By:



Joan S. Burke, 013687

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**ORIGINAL** and thirteen (13) copies of the foregoing filed this 1<sup>st</sup> day of April 2014 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

